IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE NINETH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION No. 21066 of 2004

Between:

1 N.Kanaka Raju, S/o Mallesham,
Proprietor, Archana Kirana and Jaggery Merchant, Gangapuri

Village, Manthini Mandal, Karimnagar District
2 P.Pandari, S/o Chandraiah,
Proprietor, M/s Laxmi Ganapathi & Co., Jaggery Merchant,

Kamareddy, Nizamabad District
3 B.Ram Reddy, S/o Malla Reddy,
R/o Kamareddy, Nizamabad District

..... PETITIONERS

AND

1 The Deputy Commissioner of Prohibition and Excise,

Karimnagar Division, Karimnagar District.
2 The Prohibition and Excise Inspector,

Prohibition and Excise Station, Manthani,
Karimnagar District

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ order or Direction, more particularly one in the nature of Writ of Mandamus declaring the order dated 08-06-2004 in Cr.No.67/2004/P&4 Ex/A4 passed by the 1st respondent whereby confiscating the D.C.M.Vehicle bearing No.AP-25-U-5571, 35 Quintals of Black Jaggery and 20 Kgs. of Alum as illegal, arbitrary and without jurisdiction and consequently direct the respondents to return the vehicle as well as the Jaggery and Alum stated above in favour of the Petitioners.

Counsel for the Petitioners : MR.A.PRABHAKAR RAO

Counsel for the Respondents : GP FOR PROHIBITION & EXCISE

The Court made the following :

ORDER :

The petitioners are aggrieved by the proceedings dated 8-6-2004 of the Deputy Commissioner of Prohibition and Excise, Karimnagar, first respondent herein, whereby and whereunder purporting to exercise the power under sub-section (2) of Section 46 of the Andhra Pradesh Excise Act, 1968 (for brevity 'the Act'), the first respondent confiscated 35 quintals of Black Jaggery and 20 Kgs of Alum and D.C.M. Van bearing No. AP 25U 5571.

The fact of the matter is very short. The third petitioner is the owner of the vehicle, which was detained when it was found transporting Jaggery and Alum. On a suspicion that the goods were intended for the manufacturing of I.D. Liquor, a crime being P.R.No.320/2003-04 was registered on 21-12-2003 and the second respondent submitted proposals to the first respondent for taking action under Section 46 of the Act for confiscation of the vehicle as well as the goods. A show-cause notice dated 12-3-2004 was issued and the petitioner was asked to submit the explanation within fifteen days. The show cause notice was served on the petitioner on 26-4-2004. Therefore, the first respondent by proceedings dated 8-6-2004 ordered for confiscation of the vehicle as well as the goods.

In this writ petition, it is contended that after receiving the show-cause notice the petitioner submitted explanation on 6-5-2004 and the first respondent on a mistaken impression passed the impugned order as if no explanation was submitted. It is also submitted that the first respondent issued notice on 19-7-2004 fixing the date for hearing on 2-8-2004 which would show that the

explanation was not at all submitted.

This Court after hearing the matter directed the learned Government Pleader for Prohibition and Excise to produce the original records. After perusing the files produced before this Court, it becomes clear that after receiving the proposals from the second respondent, the first respondent issued a show cause notice and thereafter passed the impugned orders. Having passed the orders, which is impugned in this writ petition, again curiously the first respondent issued a notice on 19-7-2004 fixing the date of hearing on 2-8-2004. This is obviously a condonable mistake by this Court of Judicial Review. If the petitioner is aggrieved by the impugned order, it shall be open to him to file an appeal before the Commissioner of Prohibition and Excise, under Section 46C of the Act, within a period of two weeks from today. As and when such appeal is filed, the Commissioner of Prohibition and Excise may entertain the appeal and pass appropriate orders considering the merits of the case. It appears, during the pendency of the confiscation proceedings, the vehicle in question was released on petitioner furnishing the bank guarantee in a sum of Rs.1,00,000/-. If that be so, till the appeal is disposed of by the Commissioner, the same situation may continue. It is also made clear that as and when the petitioner files an appeal within a period of two weeks from today, the Commissioner of Prohibition and Excise shall dispose of the same within a period of four weeks thereafter.

The writ petition, with the above observations, is disposed of. No costs.

(V.V.S. RAO, J)

09-06-2005.

Msr.

To

1 The Deputy Commissioner of Prohibition and Excise,

Karimnagar Division, Karimnagar District.
2 The Prohibition and Excise Inspector,

Prohibition and Excise Station, Manthani,
Karimnagar District

3 2 CCs to Government Pleader for Prohibition & Excise,

High Court Buildings, Hyderabad.

4 2 CD copies

HON'BLE SRI JUSTICE V.V.S. RAO

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(Msr)